



## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice of Funding Opportunity for the Railroad Crossing Elimination Program

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT)

**ACTION:** Notice of funding opportunity.

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**SUMMARY:** This notice details the application requirements and procedures to obtain grant funding for eligible projects under the Railroad Crossing Elimination Program for Fiscal Year 2022. This notice solicits applications for the Railroad Crossing Elimination Program funds made available by the Infrastructure Investment and Jobs Act. The opportunity described in this notice is made available under Assistance Listings Number 20.327, “Railroad Crossing Elimination.”

**DATES:** Applications for funding under this solicitation are due no later than 5:00 p.m. ET, [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Applications that are incomplete or received after 5:00 p.m. ET, on [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] will not be considered for funding. See Section D of this notice for additional information on the application process.

**ADDRESSES:** Applications must be submitted via [www.Grants.gov](https://www.Grants.gov). Only applicants who comply with all submission requirements described in this notice and submit applications through [www.Grants.gov](https://www.Grants.gov) will be eligible for award. For any supporting application materials that an applicant is unable to submit via [www.Grants.gov](https://www.Grants.gov) (such as oversized engineering drawings), an applicant may submit an original and two (2) copies to Mr. Douglas Gascon, Office of Policy and Planning, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W38-212, Washington, DC 20590. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service,

applicants are advised to use other means of conveyance (such as courier service) to assure timely receipt of materials before the application deadline.

**FOR FURTHER INFORMATION CONTACT:** For further information related to this notice, please contact Mr. Douglas Gascon, Office of Policy and Planning, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W38-212, Washington, DC 20590; email: [douglas.gascon@dot.gov](mailto:douglas.gascon@dot.gov); phone: 202-493-0239.

**SUPPLEMENTARY INFORMATION:**

**Notice to applicants:** FRA recommends that applicants read this notice in its entirety prior to preparing application materials. Definitions of key terms used throughout the NOFO are provided in Section A(2) below. These key terms are capitalized throughout the NOFO. There are several administrative and specific eligibility requirements described herein with which applicants must comply. Additionally, applicants should note that the required Project Narrative component of the application package may not exceed 25 pages in length.

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**A. Program Description**

**1. Overview**

Section 22305 of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58, November 15, 2021), codified at 49 U.S.C. 22909, authorizes the Railroad Crossing Elimination Program (RCE Program). The purpose of the RCE Program is to fund highway-rail or pathway-rail grade crossing improvement projects that focus on improving the safety and mobility of people and goods. This NOFO is funded through the advanced appropriation in Division J of IIJA. The RCE Program provides a Federal funding opportunity to improve American rail infrastructure to enhance rail safety, improve the health and safety of communities, eliminate highway-rail and pathway-rail grade crossings that are frequently blocked by trains, and reduce the impacts that freight movement and railroad operations may have on underserved communities. Discretionary grant awards, funded through the RCE Program, will support projects that improve safety, economic strength and global competitiveness, equity, and climate and sustainability, consistent with the U.S. Department of Transportation's (DOT) strategic goals.<sup>1</sup>

FRA has a strong interest in promoting grade separations, closing crossings through track relocation, and corridor-wide grade crossing improvements that maximize the safety and efficiency of the U.S. rail network. Highway-rail grade crossing accidents, together with accidents caused by trespassing along the railroad right-of-way, account for 94% of all rail-related deaths and injuries. The safest crossing is no crossing, and grade separating or otherwise eliminating crossings is the most direct way to prevent intrusions into the railroad right-of-way.

The RCE Program will be implemented, as appropriate and consistent with law, in alignment with the priorities in Executive Order 14052, *Implementation of the Infrastructure Investments and Jobs Act* (86 FR 64355), which are to invest efficiently

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<sup>1</sup> DOT Strategic Framework FY 2022–2026 (Dec. 2021) at <https://www.transportation.gov/administrations/office-policy/fy2022-2026-strategic-framework>.

and equitably, promote the competitiveness of the U.S. economy, improve job opportunities by focusing on high labor standards, strengthen infrastructure resilience to all hazards including climate change, and to effectively coordinate with State, local, Tribal, and territorial government partners.

In addition to improving safety, FRA seeks to fund projects under the RCE Program that reduce greenhouse gas emissions and are designed with specific elements to address climate change impacts. Specifically, FRA is looking to award projects that align with the President's greenhouse gas reduction goals, promote energy efficiency, support fiscally responsible land use and efficient transportation design, increase climate resilience, support domestic manufacturing, and reduce pollution.

FRA also seeks to fund projects that address environmental justice, particularly for communities that disproportionately experience climate change-related consequences. Environmental justice, as defined by the Environmental Protection Agency, is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. As part of the implementation of Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (86 FR 7619), FRA seeks to fund projects that, to the extent possible, target at least 40 percent of resources and benefits towards low-income communities, disadvantaged communities, communities underserved by affordable transportation, or overburdened<sup>2</sup> communities. For more information, please consult DOT's disadvantaged communities mapping tool to determine if a proposed project impacts disadvantaged communities: Transportation

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<sup>2</sup> Overburdened Community: Minority, low-income, tribal, or indigenous populations or geographic locations in the United States that potentially experience disproportionate environmental harms and risks. This disproportionality can be as a result of greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors. Increased vulnerability may be attributable to an accumulation of negative or lack of positive environmental, health, economic, or social conditions within these populations or places. The term describes situations where multiple factors, including both environmental and socio-economic stressors, may act cumulatively to affect health and the environment and contribute to persistent environmental health disparities.

Disadvantaged Census Tracts (arcgis.com) and at:

<https://usdot.maps.arcgis.com/apps/dashboards/d6f90dfcc8b44525b04c7ce748a3674a>.

Additionally, FRA seeks to fund projects that proactively address racial equity and barriers to opportunity, including automobile dependence, as a form of barrier, or redress prior inequities and barriers to opportunity. Section E describes racial equity considerations that an applicant can undertake, and FRA will consider during the review of applications.

In addition to prioritizing projects that address climate change, proactively address racial equity, and reduce barriers to opportunity, FRA intends to use the RCE program to support the creation of good-paying jobs with the free and fair choice to join a union and the incorporation of strong labor standards and training and placement programs, especially registered apprenticeships and Local Hire agreements, in project planning stages. Projects that incorporate such planning considerations are expected to support a strong economy and labor market. Section E describes job creation and labor considerations that an applicant can undertake, and that FRA will consider, during the review of applications.

Section E of this NOFO, which outlines the RCE Program grant selection criteria, describes the process for selecting projects that further these goals. Section F.3 describes progress and performance reporting requirements for selected projects, including the relationship between that reporting and the RCE Program's selection criteria.

## **2. Definitions of Key Terms**

Terms defined in this section are capitalized throughout this notice.

- a. "Construction" means the production of fixed works and structures or substantial alterations to such structures or land and associated costs.
- b. "Commuter Rail Passenger Transportation" means short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare,

multiple ride, and commuter tickets and morning and evening peak period operations, consistent with 49 U.S.C. 24102(3).

- c. “Final Design (FD)” means design activities following Preliminary Engineering, and at a minimum, includes the preparation of final Construction plans consistent with the applicable environmental decision document, detailed specifications, and estimates sufficiently detailed to inform project stakeholders (designers, reviewers, contractors, suppliers, etc.) of the actions required to advance the project from design through completion of Construction.
- d. “Grade Separation or Closure” means an underpass or overpass to eliminate level crossings between railroad and highway users at an existing highway-rail or pathway-rail grade crossing, or the closing of a highway-rail grade crossing to vehicular or pedestrian traffic.
- e. “Highway-Rail Grade Crossing” means a location where a public highway, road, street, or private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks at grade.
- f. “Improvement Project” means a project related to a highway or pathway-rail crossing including: installation, repair, or improvement of crossings, grade separations, railroad crossing signals, gates, bells, audible warning devices and related technologies; highway traffic signalization, lighting, crossing approach signage, and roadway improvements such as medians or other barriers; pathway improvements such as bollards; railroad crossing panels and surfaces; and other safety engineering improvements, or highway-rail programs to reduce risk.
- g. “National Environmental Policy Act (NEPA)” is a federal law that requires Federal agencies to analyze and document the environmental impacts of a proposed action in consultation with appropriate Federal, state, and local authorities, and with the public. NEPA classes of action include an

Environmental Impact Statement (EIS), Environmental Analysis (EA) or Categorical Exclusion (CE). The NEPA class of action depends on the nature of the proposed action, its complexity, and the potential impacts. For purposes of this NOFO, NEPA also includes all related Federal laws and regulations including the Clean Air Act, Section 4(f) of the Department of Transportation Act, Section 7 of the Endangered Species Act, and Section 106 of the National Historic Preservation Act. Additional information regarding FRA's environmental processes and requirements are located at <https://www.fra.dot.gov/environment>.

- h. "Pathway-Rail Grade Crossing" means a pathway that crosses one or more railroad tracks at grade and that is: (1) explicitly authorized by a public authority or a railroad; (2) dedicated for the use of non-vehicular traffic, including pedestrians, bicyclists, and others; and (3) not associated with a public highway, road, or street, or a private roadway.
- i. "Preliminary Engineering (PE)" means engineering design to: (1) define a project, including identification of all environmental impacts, design of all critical project elements at a level sufficient to assure reliable cost estimates and schedules; (2) complete project management and financial plans; and (3) identify procurement requirements and strategies. The PE development process starts with specific project design alternatives that allow for the assessment of a range of rail improvements, specific alignments, and project designs. PE generally occurs concurrently with NEPA and related analyses, and prior to Final Design and Construction.
- j. "Rural Area" means any area that is not within an area designated as an urbanized area by the most recent Bureau of the Census.

- k. “Track Relocation” means moving a rail line vertically or laterally to a new location in order to eliminate an existing highway-rail grade crossing. “Vertical Relocation” refers to raising above the current ground level or sinking below the current ground level of a rail line. “Lateral Relocation” refers to moving a rail line horizontally to a new location.
- l. “Tribal Lands” means any lands reserved for a Federally-recognized Native American tribe or tribes under treaty or other agreement with the United States, executive order, or federal statute or administrative action as permanent tribal homelands, and where the federal government holds title to the land in trust on behalf of the tribe.

## **B. Federal Award Information**

### *1. Available Award Amount*

The total funding available for awards under this NOFO is \$573,264,000.<sup>3</sup> Should additional RCE Program funds become available after the release of this NOFO, FRA may elect to award such additional funds to applications received under this NOFO.

Further, certain funding amounts are set-aside for the following purposes under this NOFO:

- a) Planning Projects –At least three percent of the total grant funds available, or \$18,000,000, will be made available for planning projects described in 49 U.S.C. 22909(d)(6). At least 25 percent of these funds, or \$4,500,000 will be made available for projects located in Rural Areas or on Tribal Lands.
- b) Rural or Tribal set aside – At least 20 percent of the total grant funds available, or \$114,652,800, will be made available for projects located in Rural Areas or on

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<sup>3</sup> Of the \$600,000,000 in funding made available in Title J of IIJA, \$14,736,000 will be separately made available for Special Transportation Circumstances grants and \$12,000,000 will be set aside for award and program oversight conducted by FRA.



Tribal Lands, as required by 49 U.S.C. 22909(f)(3)(A). At least five percent of these funds, or \$5,732,640 will be made available for projects in counties with 20 or fewer residents per square mile, according to the most recent decennial census, provided that sufficient eligible applications have been submitted.

In addition, FRA will make at least \$1,500,000 available for grants that carry out Highway-Rail Grade Crossing safety information and education programs.

## *2. Award Size*

FRA will not award grants for less than \$1,000,000, except for a planning project, as described in section 49 U.S.C. 22909(d)(6). There are no predetermined maximum dollar thresholds for individual awards, but no more than 20% of the grant funds available (\$114,652,800) will be awarded for projects in any single State. FRA anticipates making multiple awards with the available funding. Given the limited amount of funding currently available, FRA may not be able to award grants to all eligible applications even if they meet or exceed the stated evaluation criteria (see Section E, Application Review Information). Projects may require more funding than is available. FRA encourages applicants to propose a project that has operational independence, or a component of such project, that can be completed and implemented with funding under this NOFO as a part of the total project cost together with other, non-Federal sources. (See Section C(3)(c) for more information.)

## *3. Award Type*

FRA will make awards for projects selected under this notice through grant agreements and/or cooperative agreements. Grant agreements are used when FRA does not expect to have substantial Federal involvement in carrying out the funded activity. Cooperative agreements allow for substantial Federal involvement in carrying out the agreed upon investment, including technical assistance, review of interim work products, and increased program oversight. The term “grant” is used throughout this document and

is intended to reference funding awarded through a grant agreement or a cooperative agreement. The funding provided under this NOFO will be made available to grantees on a reimbursable basis. Applicants must certify that their expenditures are allowable, allocable, reasonable, and necessary to the approved project before seeking reimbursement from FRA. Additionally, the grantee is expected to expend matching funds at the required percentage concurrent with Federal funds throughout the life of the project. See an example of standard terms and conditions for FRA grant awards at: <https://www.fra.dot.gov/eLib/Details/L19057>. This template is subject to revision.

#### *4. Concurrent Applications*

DOT and FRA may be concurrently soliciting applications for transportation infrastructure projects for several financial assistance programs. Applicants may submit applications requesting funding for a particular project to one or more of these programs. In the application for funding under this NOFO, applicants must indicate the other program(s) to which they submitted an application for funding the entire project or certain project components, as well as highlight new or revised information in the application responsive to this NOFO that differs from the previously submitted application(s).

### **C. Eligibility Information**

This section of the notice explains applicant eligibility, cost sharing and matching requirements, project eligibility, and project component operational independence. Applications that do not meet the requirements in this section are ineligible for funding. Instructions for submitting eligibility information to FRA are detailed in Section D of this NOFO.

#### *1. Eligible Applicants*

The following entities are eligible applicants for all projects permitted under this notice:

- a. A State, including the District of Columbia, Puerto Rico, and other United States territories and possessions;
- b. A political subdivision of a State;
- c. A federally recognized Indian Tribe.
- d. A unit of local government or a group of local governments.
- e. A public port authority.
- f. A metropolitan planning organization.
- g. A group of entities described in any of paragraphs (1) through (6).

Grants under the RCE Program are not subject to the limitation in 49 U.S.C. 22905(f) and may therefore be awarded for commuter rail passenger transportation projects. FRA will transfer such projects to the Federal Transit Administration to administer.

The applicant serves as the primary point of contact for the application, and if selected, as the recipient of the RCE Program grant award. An application may identify entities that are not eligible applicants as project partners.

## *2. Cost Sharing or Matching*

The Federal share of total costs for RCE Program projects funded under this notice shall not exceed 80 percent. The estimated total cost of a project must be based on the best available information, including engineering studies, studies of economic feasibility, and environmental analyses. Additionally, in preparing estimates of total project costs, applicants may use FRA's cost estimate guidance, "Capital Cost Estimating: Guidance for Project Sponsors," which is available at: <https://www.fra.dot.gov/Page/P0926>.

The minimum 20 percent non-Federal share may be comprised of public sector funding (e.g., state, or local) or private sector funding. FRA will not consider any Federal

financial assistance<sup>4</sup> or any non-Federal funds already expended (or otherwise encumbered) toward the matching requirement, unless compliant with 2 CFR part 200. In-kind contributions, including the donation of services, materials, and equipment, may be credited as a project cost, in a uniform manner consistent with 2 CFR 200.306. In addition, applicants may count costs incurred for Preliminary Engineering associated with Highway-Rail Grade Crossing and Pathway-Rail Grade Crossing Improvement Projects as part of the total project costs. Such costs are eligible as non-Federal share or for reimbursement, even if they were incurred before project selection for award, consistent with 49 U.S.C. 22909(g).<sup>5</sup> Such costs must have been incurred no earlier than November 15, 2021 and must be otherwise compliant with 2 CFR part 200 and the requirements of this RCE Program.

Before applying, applicants should carefully review the principles for cost sharing or matching in 2 CFR 200.306. See Section D(2)(a)(iii) for required application information on non-Federal match and Section E for further discussion of FRA's consideration of matching funds in the review and selection process. FRA will approve pre-award costs consistent with 2 CFR 200.458, as applicable. See Section D(6). Cost sharing or matching may be used only for eligible expenses under the Program and are subject to the requirements of the Federal award.

### *3. Other*

#### *a. Project Eligibility*

The following Highway-Rail or Pathway-Rail Grade Crossing Improvement Projects that focus on improving the safety and mobility of people and goods are eligible for funding under 49 U.S.C. 22909(d), and this NOFO:

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<sup>4</sup> See Section D(2)(a)(iii) for supporting information required to demonstrate eligibility of Federal funds for use as match.

<sup>5</sup> FRA interprets the language in 49 U.S.C. 22909(g) to permit FRA to reimburse grantees for Preliminary Engineering costs incurred before the date of project selection, if the costs would be permitted as part of total project costs if incurred after the date of project selection and are consistent with 2 CFR part 200.

- (1) Grade separation or closure, including through the use of a bridge, embankment, tunnel, or combination thereof;
- (2) Track relocation;
- (3) The improvement or installation of protective devices, signals, signs, or other measures the improve safety, provided that such activities are related to a separation or relocation project described in paragraph (1) or (2);
- (4) Other means to improve the safety and mobility of people and goods at highway-rail grade crossings (including technological solutions);<sup>6</sup>
- (5) A group of related projects described in paragraphs (1) through (4) that would collectively improve the mobility of people and goods; or
- (6) The planning, environmental review, and design of an eligible project described in paragraphs (1) through (5).<sup>7</sup>

b. Project Component Operational Independence

If an applicant requests funding for a project that is a component or set of components of a larger project, then the project component(s) must be attainable with the award amount and must comply with all eligibility requirements described in Section C.

In addition, the component(s) must enable independent analysis and decision making, as determined by FRA, under NEPA (i.e., have independent utility, connect logical termini, and do not restrict the consideration of alternatives for other reasonably foreseeable rail projects).

c. Rural or Tribal Lands Project

FRA will consider a project to be in a Rural Area or on Tribal Lands if all or the majority of the project (determined by geographic location(s) where the majority of the

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<sup>6</sup> Highway-Rail Grade Crossing Safety Information and Education Programs are eligible under this category.

<sup>7</sup> Projects under this section are eligible independently, or together with construction of a project in paragraph (1) through (5).

project funds will be spent) is located in a Rural Area or on Tribal Lands. However, in the event FRA elects to fund a component of the project, then FRA will reevaluate whether the project is in a Rural Area or on Tribal Lands.

#### **D. Application and Submission Information**

Required documents for the application are outlined in the following paragraphs. Applicants must complete and submit all components of the application. See *Section D(2)* for the application checklist. FRA welcomes the submission of additional relevant supporting documentation, such as planning, engineering and design documentation, and letters of support from partnering organizations that will not count against the Project Narrative 25-page limit.

##### *1. Address to Request Application Package*

Application materials may be accessed at <https://www.Grants.gov>. Applicants must submit all application materials in their entirety through <https://www.Grants.gov> no later than 5:00 p.m. ET, on **[INSERT DATE 90 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]**. Applicants are strongly encouraged to apply early to ensure that all materials are received before the application deadline. FRA reserves the right to modify this deadline. General information for submitting applications through Grants.gov can be found at: <https://www.fra.dot.gov/Page/P0270>. FRA is committed to ensuring that information is available in appropriate alternative formats to meet the requirements of persons who have a disability. If you require an alternative version of files provided, please contact Laura Mahoney at [laura.mahoney@dot.gov](mailto:laura.mahoney@dot.gov); phone: 202-578-9337.

##### *2. Content and Form of Application Submission*

FRA strongly advises applicants to read this section carefully. Applicants must submit all required information and components of the application package to be

considered for funding. Applications that are not submitted on time or do not contain all required documentation will not be considered for funding.

Required documents for an application package are outlined in the checklist below.

- i. Project Narrative (see D.2.a).
- ii. Statement of Work (see D.2.b.i).
- iii. Environmental Compliance Documentation (see D.2.b.iii).
- iv. SF 424 – Application for Federal Assistance.
- v. SF 424A – Budget Information for Non-Construction or SF 424C – Budget Information for Construction.
- vi. SF 424B – Assurances for Non-Construction or SF 424D – Assurances for Construction.
- vii. FRA F 30 - Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying.
- viii. FRA F 251 – Applicant Financial Capability Questionnaire
- ix. SF LLL – Disclosure of Lobbying Activities, if applicable.

a. Project Narrative

This section describes the minimum content required in the Project Narrative of grant applications. The Project Narrative must follow the basic outline below to address the program requirements and assist evaluators in locating relevant information.

I. Cover Page	See D.2.a.i
II. Project Summary	See D.2.a.ii
III. Project Funding	See D.2.a.iii
IV. Applicant Eligibility	See D.2.a.iv
V. Detailed Project Description	See D.2.a.v

VI. Project Location	See D.2.a.vi
VII. Grade Crossing Information	See D.2.a.vii
VIII. Evaluation and Selection Criteria	See D.2.a.viii
IX. Safety Benefit	See D.2.a.ix
X. Project Implementation and Management	See D.2.a.x
XI. Environmental Readiness	See D.2.a.xi

The above content must be provided in a narrative statement submitted by the applicant. The Project Narrative may not exceed 25 pages in length (excluding cover pages, table of contents, and supporting documentation).. If possible, applicants should submit supporting documents via website links rather than hard copies. If supporting documents are submitted, applicants must clearly identify the relevant portion of the supporting document with the page numbers of the cited information in the Project Narrative. The Project Narrative must adhere to the following outline.

- i. *Cover Page*: Include a cover page that lists the following elements in either a table or formatted list:

Project Title	
Applicant	
Federal Funding Requested Under this NOFO	\$:
Proposed Non-Federal Match	\$: In-Kind:
Does some or all of the proposed Non-Federal Match for the total project cost consist of preliminary engineering costs incurred before project selection?	If yes, how much?
Other Sources of Federal funding, if applicable	Source: \$:
Total Project Cost	\$
Was a Federal Grant Application Previously Submitted for this Project?	Yes/No If yes, please specify the program, funding year and project title of the previous application.



City(-ies), State(s) Where the Project is Located	
Congressional District(s) Where the Project is Located	
Is this project identified in: <ul style="list-style-type: none"> <li>• The freight investment plan component of a State freight plan, as required under Section 70202(b)(9),</li> <li>• A State rail plan prepared in accordance with Chapter 227; or</li> <li>• A State highway-rail grade crossing action plan, as required under section 11401(b) of Passenger Rail Reform and Investment Act of 2015 (title XI of P.L. 114-94).</li> </ul>	Yes/No.  If Yes, please specify in which plans the project is currently identified, and provide the identifying number if applicable.
Is the Project Located in a Rural Area or on Tribal Land?	
Is the project eligible for a funding set-aside in Section B.1?	If yes, please specify which one [Planning Projects, Safety Information and Education Program, Rural or Tribal Set-Aside]
If the Project is located in a Rural Area or Tribal Land, is the Project Located in a county with 20 or fewer residents per square mile, according to the most recent decennial census.	
U.S. DOT Crossing Number(s) <sup>8</sup> (if applicable).	
Is the Project located on real property owned by someone other than the applicant?	If yes, list real property owners and the nature of the property interest

- ii. *Project Summary*: Provide a brief 4–6 sentence summary of the proposed project and what the project will entail. Include challenges the proposed project aims to address and summarize the intended outcomes and anticipated benefits that will result from the proposed project.

<sup>8</sup> <https://railroads.dot.gov/safety-data/crossing-and-inventory-data/crossing-inventory-lookup>

- iii. *Project Funding*: Indicate in table format the amount of Federal funding requested, the proposed non-Federal match, and total project cost. Identify the source(s) of matching and other funds, and clearly and distinctly reflect these funds as part of the total project cost in the application budget. Specifically, identify the financial support, if any, from impacted rail carriers. Include funding commitment letters outlining funding agreements, as attachments or in an appendix. If Federal funding is proposed as match, demonstrate the applicant's determination of eligibility for such use, and the legal basis for that determination. Also, note if the requested Federal funding under this NOFO or other programs must be obligated or spent by a certain date due to dependencies or relationships with other Federal or non-Federal funding sources, related projects, law, or other factors. If applicable, provide the type and estimated value of any proposed in-kind contributions, as well as substantiate how the contributions meet the requirements in 2 CFR 200.306. Finally, specify whether Federal funding for the project has previously been sought, and identify the Federal program and fiscal year of the funding request(s), as well as highlight new or revised information in the RCE Program application that differs from the application(s) to other financial assistance programs. If costs incurred for Preliminary Engineering activities, consistent with Section C.2 are proposed as match, describe the activities including the date(s) costs were incurred.

Example Project Funding Table:

Task #	Task Name/Project Component	Cost	Percentage of Total Cost
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1			
2			
Total Project Cost			
Federal Funds Received from Previous Grant			
Federal Funding Request Under this NOFO			
Non-Federal Funding/Match		Cash: In-Kind:  Preliminary Engineering costs, consistent with Section C.2:	
Portion of Non-Federal Funding from the Private Sector. Please list amounts per source.			
Portion of Total Project Costs Spent in a Rural Area or on Tribal Lands			
Pending Federal Funding Requests			

- iv. *Applicant Eligibility*: Explain how the applicant meets the applicant eligibility criteria outlined in *Section C* of this notice including where appropriate citations to applicable enabling legislation for the applicant.
- v. *Detailed Project Description*: Include a detailed project description that expands upon the brief project summary. This detailed description should provide, at a minimum: additional background on the challenges the project aims to address; the expected outcomes; the expected users and beneficiaries of the project, including all railroad operators; the specific

components and elements of the project; and any other information the applicant deems necessary to justify the proposed project. For all projects, applicants must provide information about proposed performance measures, as described in *Section F(3)(c)* and required in 2 CFR 200.301.

. Applicants should specify whether the project will result in the elimination of one or more grade crossings through grade separation or otherwise.

- vi. *Highway-Rail Grade Crossing Safety Information and Education Programs:* – For these projects, specify how the program will help prevent and reduce pedestrian, motor vehicle and other accidents, incidents, injuries and fatalities, and how the program will help improve awareness along railroad rights-of-way and at highway-rail grade crossings.
- vii. *Project Location:* Include geospatial data for the project, as well as a map of the project's location. Geospatial data can be expressed in terms of decimal degrees for latitude and longitude of at least five decimal places of precision or start and end mileposts designating railroad code and subdivision name. On the map, include the Congressional districts in which the project will take place.
- viii. *Grade Crossing Information:* Cite specific DOT National Grade Crossing Inventory information, including the railroad that owns the infrastructure (or the crossing owner, if different from the railroad), the primary railroad operator, the DOT crossing inventory number, and the roadway at the crossing. Applicants can search for data to meet this requirement at the following link: <http://safetydata.fra.dot.gov/OfficeofSafety/default.aspx>.
- ix. *Evaluation and Selection Criteria:* Include a thorough discussion of how the proposed project meets all of the evaluation and selection criteria, as

outlined in *Section E* of this notice. If an application does not sufficiently address the evaluation criteria and the selection criteria, it is unlikely to be a competitive application.

- x. *Safety Benefit:* Applicants are strongly encouraged to submit safety justifications for the project that rely on standardized, objective safety metrics and data, if available, including data from sources such as: GradeDec.Net; National Risk Index; 49 C.F.R. Part 234; safety metrics found in Appendix D of 49 C.F.R. Part 222; the FRA crossing incident dashboard (FRA Safety Data & Reporting | FRA (dot.gov)); or other relevant safety data or metrics.
- xi. *DOT Strategic Goals:* To the extent feasible, and consistent with the selection criteria described in Section F.2, applicants should describe efforts to consider climate change and sustainability impacts, as well as efforts to improve equity and reduce barriers to opportunity in project planning. In addition, applicants should describe how planning activities and project delivery actions advance good-paying, quality jobs and workforce programs and hiring policies that promote workforce inclusion.
- xii. *Project Implementation and Management:* Describe proposed project implementation and project management arrangements, including between the applicant and project partners, if any. Include descriptions of the expected arrangements for project contracting, contract oversight and control, change-order management, risk management, and conformance to Federal requirements for project progress reporting (see <https://www.fra.dot.gov/Page/P0274>). Describe past experience in managing and overseeing similar projects.

xiii. *Environmental Readiness*: If the NEPA process is complete, an applicant should indicate the date of completion, and provide a website link or other reference to the documents demonstrating compliance with NEPA, which might include a final Categorical Exclusion, Finding of No Significant Impact, or Record of Decision. If the NEPA process is not yet underway, the application should state this. If the NEPA process is underway, but not complete, the application should detail the type of NEPA review underway, where the project is in the process, and indicate the anticipated date of completion of all NEPA-related milestones. If the last agency action with respect to NEPA documents occurred more than three years before the application date, the applicant should describe why the project has been delayed and why NEPA documents have not been updated and include a proposed approach for verifying and, if necessary, updating this material in accordance with applicable NEPA requirements. Additional information regarding FRA's environmental processes and requirements are located at <https://www.fra.dot.gov/environment>.

b. Additional Application Elements

Applicants must submit:

- i. A Statement of Work (SOW) addressing the scope, schedule, budget, and performance measures for the proposed project if it were selected for award. The SOW must contain sufficient detail so FRA, and the applicant, can understand the expected outcomes of the proposed work to be performed and can monitor progress toward completing project tasks and deliverables during a prospective grant's period of performance.

Applicants must submit an SOW, schedule, budget, and performance measures to be considered for award. These four required documents are

labeled Example General Grants - Attachments 2-5 and are located at <https://www.fra.dot.gov/Page/P0325>. Applications that do not include all four of the grant package templates will be considered incomplete and will not be reviewed. When preparing the budget, the total cost of a project must be based on the best available information as indicated in cited references that include engineering studies, economic feasibility studies, environmental analyses, and information on the expected use of equipment or facilities.

- ii. Environmental compliance documentation, as applicable, if a website link is not cited in the Project Narrative.
- iii. SF 424 – Application for Federal Assistance.
- iv. SF 424A – Budget Information for Non-Construction or SF 424C – Budget Information for Construction.
- v. SF 424B – Assurances for Non-Construction or SF 424D – Assurances for Construction.
- vi. FRAF 30 – Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying, located at <https://railroads.dot.gov/elibrary/fra-f-30-certifications-regarding-debarment-suspension-and-other-responsibility-matters>.
- vii. FRA F 251 – Applicant Financial Capability Questionnaire, located at <https://railroads.dot.gov/elibrary/fra-f-251>.
- viii. SF LLL – Disclosure of Lobbying Activities, if applicable.

Standard OMB Forms needed for the electronic application process are at [www.Grants.gov](http://www.Grants.gov).

c. Post-Selection Requirements

See Section F(2) of this notice for post-selection requirements.

### *3. Unique Entity Identifier and System for Award Management (SAM)*

To apply for funding through Grants.gov, applicants must be properly registered in SAM before submitting an application; provide a valid unique entity identifier in its application; and continue to maintain an active SAM registration as described in detail below. Complete instructions on how to register and submit an application can be found at [www.Grants.gov](http://www.Grants.gov). Registering with Grants.gov is a one-time process; however, it can take up to several weeks for first-time registrants to receive confirmation and a user password. FRA recommends that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application package by the application deadline. Applications will not be accepted after the due date. Delayed registration is not an acceptable justification for an application extension.

FRA may not make a grant award to an applicant until the applicant has complied with all applicable SAM requirements. If an applicant has not fully complied with these requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a federal award and use that determination as a basis for making a federal award to another applicant. Late applications that are the result of a failure to register or comply with Grants.gov applicant requirements in a timely manner will not be considered. If an applicant has not fully complied with the requirements by the submission deadline, the application will not be considered. To submit an application through Grants.gov, applicants must:

- a. Register with the SAM at [www.SAM.gov](http://www.SAM.gov).

All applicants for Federal financial assistance must maintain current registrations in the SAM database. An applicant must be registered in SAM to successfully register in Grants.gov. The SAM database is the repository for standard information about Federal



financial assistance applicants, recipients, and subrecipients. Organizations that have previously submitted applications via Grants.gov are already registered with SAM, as it is a requirement for Grants.gov registration. Please note, however, that applicants must update or renew their SAM registration at least once per year to maintain an active status. Therefore, it is critical to check registration status well in advance of the application deadline. If an applicant is selected for an award, the applicant must maintain an active SAM registration with current information throughout the period of the award, including information on a recipient's immediate and highest-level owner and subsidiaries, as well as on all predecessors that have been awarded a federal contract or grant within the last three years, if applicable. Information about SAM registration procedures is available at [www.sam.gov](http://www.sam.gov).

b. Obtain a Unique Entity Identifier.

On April 4, 2022, the federal government stopped using DUNS numbers. The DUNS Number was replaced by a new, non-proprietary identifier that is provided by the System for Award Management (SAM.gov). This new identifier is called the Unique Entity Identifier (UEI), or the Entity ID. To find or request a Unique Entity Identifier, please visit [www.sam.gov](http://www.sam.gov).

c. Create a Grants.gov username and password.

Applicants must complete an Authorized Organization Representative (AOR) profile on [www.Grants.gov](http://www.Grants.gov) and create a username and password. Applicants must use the organization's UEI to complete this step. Additional information about the registration process is available at: <https://www.grants.gov/web/grants/applicants/organization-registration.html>.

d. Acquire Authorization for your AOR from the E-Business Point of Contact (E-Biz POC).

The E-Biz POC at the applicant's organization must respond to the registration email from Grants.gov and login at [www.Grants.gov](http://www.Grants.gov) to authorize the applicant as the AOR. Please note there can be more than one AOR for an organization.

e. Submit an Application Addressing All Requirements Outlined in this NOFO.

If an applicant has trouble at any point during this process, please call the Grants.gov Customer Center Hotline at 1-800-518-4726, 24 hours a day, 7 days a week (closed on Federal holidays). For information and instructions on each of these processes, please see instructions at: <http://www.grants.gov/web/grants/applicants/apply-for-grants.html>.

#### *4. Submission Dates and Times*

Applicants must submit complete applications to [www.Grants.gov](http://www.Grants.gov) no later than 5:00 p.m. ET, [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Applicants will receive a system-generated acknowledgement of receipt. FRA reviews [www.Grants.gov](http://www.Grants.gov) information on dates/times of applications submitted to determine timeliness of submissions. Late applications will be neither reviewed nor considered. Delayed registration is not an acceptable reason for late submission. To apply for funding under this announcement, all applicants are expected to be registered as an organization with Grants.gov. Applicants are strongly encouraged to apply early to ensure all materials are received before this deadline.

To ensure a fair competition of limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) failure to complete the Grants.gov registration process before the deadline; (2) failure to follow Grants.gov instructions on how to register and apply as posted on its website; (3) failure to follow all the instructions in this NOFO; and (4) technical issues experienced with the applicant's computer or information technology environment.

## *5. Intergovernmental Review*

Intergovernmental Review is required for this program. Applicants must contact their State Single Point of Contact to comply with their State's process under Executive Order 12372.

## *6. Funding Restrictions*

Consistent with 2 CFR 200.458, as applicable, FRA will only approve pre-award costs if such costs are incurred pursuant to the negotiation and in anticipation of the grant agreement and if such costs are necessary for efficient and timely performance of the scope of work. Under 2 CFR 200.458, grant recipients must seek written approval from FRA for pre-award activities to be eligible for reimbursement under the grant. Activities initiated prior to the execution of a grant or without FRA's written approval may be ineligible for reimbursement or matching contribution. Cost sharing or matching may be used only for authorized Federal award purposes.

## *7. Other Submission Requirements*

For any supporting application materials that an applicant cannot submit via Grants.gov, such as oversized engineering drawings, an applicant may submit an original and two (2) copies to Douglas Gascon, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, FRA advises applicants to use other means of conveyance (such as courier service) to assure timely receipt of materials before the application deadline. Additionally, if documents can be obtained online, explaining to FRA how to access files on a referenced website may also be sufficient.

Note: Please use generally accepted formats such as .pdf, .doc, .docx, .xls, .xlsx and .ppt, when uploading attachments. While applicants may embed picture files, such as .jpg, .gif, and .bmp in document files, applicants should not submit attachments in these

formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

## **E. Application Review Information**

### *1. Criteria*

#### *a. Eligibility, Completeness, and Applicant Risk Review*

FRA will first screen each application for applicant and project eligibility (eligibility requirements are outlined in Section C of this notice), completeness (application documentation and submission requirements are outlined in Section D of this notice), and the 20 percent minimum non-Federal match.

FRA will then consider applicant risk, including the applicant's past performance in developing and delivering similar projects.

#### *b. Evaluation Criteria*

FRA will evaluate all eligible and complete applications using the evaluation criteria outlined in this section to determine project benefits and technical merit.

##### *i. Project Benefits:*

FRA will evaluate application information for the extent to which the proposed project —

- (A) Improves safety at Highway-Rail or Pathway Rail Grade Crossings;
- (B) Proposes to grade separate, eliminate, or close one or more Highway-Rail or Pathway-Rail Grade Crossings;
- (C) Improves the mobility of both people and goods;
- (D) Reduces emissions, protects the environment, and provides community benefit (including noise reduction);
- (E) Improves access to emergency services;
- (F) Improves access to communities;
- (G) Provides economic benefit; and

(H) Uses contracting incentives to employ local labor, to the extent permissible under Federal law.

ii. Technical Merit

FRA will evaluate application information for the degree to which —

- (A) The tasks and subtasks outlined in the statement of work (SOW) are appropriate to achieve the expected outcomes of the proposed project;
- (B) The application demonstrates strong project readiness and ability to meet RCE Program requirements;
- (C) The technical qualifications and experience of key personnel the applicant proposes to lead and perform the technical efforts, including the qualifications of the primary and supporting organizations, demonstrates the ability to fully and successfully execute the proposed project within the proposed time frame and budget;
- (D) The project is identified in the freight investment plan component of a state freight plan, a state rail plan, a state highway-rail grade crossing action plan, a state freight plan, or other equivalent document;
- (E) The project will use innovative technologies, innovative design and construction techniques, or construction materials that reduce greenhouse gas emissions;
- (F) The project will use financial support from impacted rail carriers; and
- (G) The project will improve the mobility of multiple modes of transportation, including ingress and egress from freight facilities, or users of nonvehicular modes of transportation such as pedestrians, bicycles, and public transportation.

c. Selection Criteria

After the eligibility and completeness review and the evaluation criteria outlined in this section, FRA will then consider the extent to which the projects address the following program preferences and DOT Strategic Goals:

(A) Safety.

FRA will assess the project's ability to foster a safe transportation system for the movement of goods and people, consistent with the Department's strategic goal to reduce transportation-related fatalities and serious injuries across the transportation system. Such considerations will include, but are not limited to, the extent to which the project improves safety at highway-rail grade crossings, reduces incidences of rail-related trespassing, and upgrades infrastructure to achieve a higher level of safety.<sup>9</sup>

(B) Equitable Economic Strength and Improving Core Assets.

FRA will assess the project's ability to contribute to economic progress stemming from infrastructure investment and associated job creation in the industry. Such considerations will include, but are not limited to, the extent to which the project results in long-term job creation by supporting good-paying jobs directly related to the project with free and fair choice to join a union, such as through the use of project labor agreements, registered apprenticeships, and local hiring provisions, or other targeted preferential hiring requirements, or other similar standards or protections; invests in vital infrastructure assets and provides opportunities for families to achieve economic security through rail industry employment.

(C) Equity and Barriers to Opportunity

FRA will assess the project's ability to address equity and barriers to opportunity, to the extent possible within the program and consistent with law. Such considerations will include, but are not limited to, the extent to which the project improves or expands transportation options, mitigates the safety risks and detrimental quality of life effects that rail lines can have on communities, and expands workforce development and training

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<sup>9</sup> To best evaluate the safety benefit of a particular proposal, FRA encourages applicants to submit justifications that rely on standardized, objective safety metrics and data, if available, including: Grade Dec.Net; National Risk Index; 49 C.F.R. Part 234; Safety metrics found in Appendix D of 49 C.F.R. Part 222; FRA crossing incident dashboard (FRA Safety Data & Reporting | FRA (dot.gov)); and Other relevant safety data or metrics.

opportunities to foster a more diverse rail industry. This will also include community engagement efforts already taken or planned, the extent to which engagement efforts are designed to reach impacted communities, whether engagement is accessible for persons with disabilities or limited English proficient persons within the impacted communities, and how community feedback is taken into account in decision-making.

(D) Climate Change and Sustainability

In support of E.O. 14008, “Tackling the Climate Crisis at Home and Abroad,” FRA will assess the project’s ability to reduce the harmful effects of climate change and anticipate necessary improvements to prepare for extreme weather events. Such considerations will include, but are not limited to, the extent to which the project reduces emissions, promotes energy efficiency, increases resiliency, and recycles or redevelops existing infrastructure.

(E) Transformation of Our Nation’s Transportation Infrastructure.

FRA will assess the project’s ability to expand and improve the nation’s rail network, which needs to balance new infrastructure for increased capacity with proper maintenance of aging assets. Such considerations will include, but are not limited to, the extent to which the project adds capacity to congested corridors, and ensures assets will be improved to a state of good repair.

(F) Eliminating Crossings and Making Corridor-wide Improvements

FRA will assess whether the project results in the elimination of one or more grade crossings through grade separations, closing crossings through track relocation, and corridor-wide grade crossing improvements.

(G) Geographic Diversity

In determining the allocation of program funds, FRA may also consider geographic diversity, diversity in the size of the systems receiving funding, and the

applicant's receipt of other competitive awards. FRA will allocate program funds consistent with 49 U.S.C. 22909(f)(3).

## *2. Review and Selection Process*

FRA will conduct a four-part application review process, as follows:

- a. Screen applications for applicant and project eligibility, completeness, the minimum match and applicant risk including past performance in developing and delivering similar projects;
- b. Evaluate remaining applications (completed by technical panels applying the evaluation criteria);
- c. Review and apply selection criteria and recommend initial selection of projects for the FRA Administrator's review (completed by a Senior Review Team, which includes senior leadership from the Office of the Secretary and FRA); and
- d. Select recommended awards for the Secretary's or his designee review and approval (completed by the FRA Administrator).

## *3. Reporting Matters Related to Integrity and Performance*

Before making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold of \$250,000 (see 2 CFR 200.88 Simplified Acquisition Threshold), FRA will review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). See 41 U.S.C. 2313.

An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM.



FRA will consider any comments by the applicant, in addition to the other information, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.205.

## **F. Federal Award Administration Information**

### *1. Federal Award Notice*

FRA will announce applications selected for funding in a press release and on FRA's website after the application review period. This announcement is FRA's notification to successful and unsuccessful applicants alike. FRA will contact applicants with successful applications after announcement with information and instructions about the award process. This notification is not an authorization to begin proposed project activities. FRA requires satisfaction of applicable requirements by the applicant and a formal agreement signed by both the grantee and the FRA, including an approved scope, schedule, and budget, before obligating the grant. See an example of standard terms and conditions for FRA grant awards at <https://railroads.fra.dot.gov/elibrary/award-administration-and-grant-conditions>. This template is subject to revision.

### **2. Administrative and National Policy Requirements**

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, recipients of funds must comply with all applicable requirements of Federal law, including, without limitation: the Constitution of the United States; the relevant authorization and appropriations, the conditions of performance, nondiscrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of DOT; and applicable Federal financial assistance and contracting principles promulgated by the Office of Management and Budget (OMB). In complying with these requirements, grantees, in particular, must ensure that no concession agreements are denied or other contracting decisions made on the basis of

speech or other activities protected by the First Amendment. If FRA determines that a recipient has failed to comply with applicable Federal requirements, FRA may terminate the award of funds and disallow previously incurred costs, requiring the recipient to reimburse any expended award funds. See an example of standard terms and conditions for FRA grant awards at <https://railroads.dot.gov/elibrary/award-administration-and-grant-conditions>. This template is subject to revision.

Examples of administrative and national policy requirements include: 2 CFR Part 200; procurement standards at 2 CFR part 200 subpart D – Procurement Standards; 2 CFR 1207.317 and 2 CFR 200.401; compliance with Federal civil rights laws and regulations; disadvantaged business enterprises requirements; debarment and suspension requirements; drug-free workplace requirements; FRA’s and OMB’s Assurances and Certifications; Americans with Disabilities Act; safety requirements; NEPA; environmental justice requirements; compliance with 49 U.S.C. 24905(c)(2) for the duration of NEC Projects; and 2 CFR 200.315, governing rights to intangible property. Unless otherwise stated in statutory or legislative authority, or appropriations language, all financial assistance awards follow the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards at 2 CFR part 200 and 2 CFR part 1201.

Assistance under this NOFO is subject to the grant conditions in 49 U.S.C. 22905, including protective arrangements that are equivalent to the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836) with respect to employees affected by actions taken in connection with the project to be financed in whole or in part by grants subject to 49 U.S.C. 22905,<sup>10</sup> the provision deeming operators rail carriers and employers for certain

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<sup>10</sup> FRA has posted guidance at <https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1> to assist grantees implementing the protective arrangements.

purposes, and grantee agreements with railroad right-of-way owners for projects using railroad rights-of-way (see D.2.b.xi). In addition, recipients shall obtain necessary approvals, required under 49 U.S.C. 22909(e)(2)(A), if applicable, from any impacted rail carriers or real property owners before proceeding with the construction of a project funded by a grant under this NOFO. For planning projects, the applicant may submit instead an acknowledgment that it agrees to work collaboratively with impacted rail carriers and right-of-way owners. This condition applies notwithstanding 49 U.S.C. 22909(j)(2) and 49 U.S.C. 22905(e)(1).

Grants under the RCE Program are not subject to the limitation in 49 U.S.C. 22905(f) and may therefore be awarded for commuter rail passenger transportation projects. FRA will transfer such projects to the Federal Transit Administration to administer, consistent with 49 U.S.C. 22909(j).

Projects that have not sufficiently considered climate change and sustainability in their planning, as determined by FRA, will be required to do so before receiving funds for construction, consistent with Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (86 FR 7619). In the grant agreement, recipients will be expected to describe activities they have taken, or will take prior to obligation of construction funds that addresses climate change and environmental justice (EJ). Activities that address climate change include, but are not limited to, demonstrating: the project will result in significant greenhouse gas emissions reductions; the project supports emissions reductions goals in a Local/Regional/State plan; and the project primarily focuses on funding for state of good repair and clean transportation options, including public transportation, walking, biking, micro-mobility. Activities that address EJ include, but are not limited to: basing project design on the results of a proven EJ screening tool (developed by another Federal agency such as the EPA, a state agency, etc.); conducting enhanced, targeted outreach to EJ communities; considering EJ in alternatives analysis

and final project design; and supporting a modal shift in freight or passenger movement to reduce emissions or reduce induced travel demand.

Projects must consider and address equity and barriers to opportunity in their planning, as determined by FRA, and as a condition of receiving construction funds, consistent with Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (86 FR 7009). The grant agreement should include the recipient's description of activities they have taken, or will take prior to obligation of construction funds that addresses equity and barriers to opportunity. These activities may include, but are not limited to: completing an equity impact analysis for the project; adopting an equity and inclusion program/plan; conducting meaningful public engagement to ensure underserved communities are provided an opportunity to be involved in the planning process; including investments that either redress past barriers to opportunity or that proactively create new connections and opportunities for underserved communities; hiring from local communities; improving access to or providing economic growth opportunities for underserved, overburdened, or rural communities; or addressing historic or current inequitable air pollution or other environmental burdens and impacts.

Each applicant selected for grant funding should ensure planning activities and project delivery actions advance good-paying, quality jobs and workforce programs and hiring policies that promote workforce inclusion, consistent with Executive Order 14025, *Worker Organizing and Empowerment* (86 FR 22829), and Executive Order 14052, *Implementation of the Infrastructure Investment and Jobs Act* (86 FR 64335). Specifically, the project must support: (a) strong labor standards and the choice to join a union,<sup>11</sup> including project labor agreements and distribution of workplace rights notices;

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<sup>11</sup> Federal funds may not be used to support or oppose union organizing, whether directly or as an offset for other funds.

(b) support of high-quality workforce development programs, including registered apprenticeship, labor-management training programs, and supportive services to help train, place, and retain people in good-paying jobs and apprenticeship; and (c) comprehensive planning and policies to promote hiring and inclusion for all groups of workers, including through the use of local and economic hiring preferences, linkage agreements with workforce programs that serve these underrepresented groups, and proactive plans to prevent harassment.<sup>12</sup>

Consistent with EO 11246, *Equal Employment Opportunity* (30 FR 12319, and as amended), all federally-assisted contractors are required to make good faith efforts to meet the goals of 6.9% of construction project hours being performed by women, in addition to goals that vary based on geography for construction work hours and for work being performed by people of color. The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has a Mega Construction Project Program through which it engages with project sponsors as early as the design phase to help promote compliance with non-discrimination and affirmative action obligations. Through the program, OFCCP offers contractors and subcontractors extensive compliance assistance, conducts compliance evaluations, and helps to build partnerships between the project sponsor, prime contractor, subcontractors, and relevant stakeholders. OFCCP will identify projects that receive an award under this notice and are required to participate in OFCCP's Mega Construction Project Program from a wide range of federally assisted projects over which OFCCP has jurisdiction and that have a project cost above \$35 million. DOT will require project sponsors with costs above \$35 million that receive awards under this funding opportunity to partner with OFCCP, if selected by OFCCP, as a condition of their DOT award. Under that partnership, OFCCP will ask these project

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<sup>12</sup> IIJA div. B § 25019 provides authority for funds made available under title 49 and title 23 to use geographical and economic hiring preferences, including local hire, for construction jobs, subject to any applicable State and local laws, policies, and procedures.

sponsors to make clear to prime contractors in the pre-bid phase that project sponsor's award terms will require their participation in the Mega Construction Project Program. Additional information on how OFCCP makes their selections for participation in the Mega Construction Project Program is outlined under "Scheduling" on the Department of Labor website: <https://www.dol.gov/agencies/ofccp/faqs/construction-compliance>."

#### Critical Infrastructure Security and Resilience

It is the policy of the United States to strengthen the security and resilience of its critical infrastructure against both physical and cyber threats. Each applicant selected for Federal funding under this notice must demonstrate, prior to the signing of the grant agreement, efforts to consider and address physical and cybersecurity risks relevant to the transportation mode and type and scale of the project. Projects that have not appropriately considered and addressed physical and cyber security and resilience in their planning, design, and project oversight, as determined by the Department and the Department of Homeland Security, will be required to do so before receiving funds for construction consistent with Presidential Policy Directive 21 - Critical Infrastructure Security and Resilience and the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems.

#### Domestic Preference Requirements

Assistance under this NOFO is subject to the Buy America requirements in 49 U.S.C. 22905(a) and the Build America, Buy America Act, Pub. L. No. 117-58, 70901-52. In addition, as expressed in Executive Order 14005, *Ensuring the Future Is Made in All of America by All of America's Workers* (86 FR 7475), it is the policy of the executive branch to maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. FRA expects all applicants to comply with that requirement without needing a waiver. However, to obtain

a waiver, a recipient must be prepared to demonstrate how they will maximize the use of domestic goods, products, and materials in constructing their project.

### Civil Rights and Title VI

Recipients of Federal transportation funding will be required to comply fully with Title VI of the Civil Rights Act of 1964 and implementing regulations (49 CFR 21), the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, and all other civil rights requirements. The Department's and FRA's Office of Civil Rights may provide resources and technical assistance to recipients to ensure full and sustainable compliance with Federal civil rights requirements.

### Performance and Program Evaluation

Recipients and subrecipients are also encouraged to incorporate program evaluation, including associated data collection activities from the outset of their program design and implementation, to meaningfully document and measure their progress towards meeting an agency priority goal(s). Title I of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), Pub. L. No. 115-435 (2019) urges Federal awarding agencies and Federal assistance recipients and subrecipients to use program evaluation as a critical tool to learn, to improve equitable delivery, and to elevate program service and delivery across the program lifecycle. Evaluation means “an assessment using systematic data collection and analysis of one or more programs, policies, and organizations intended to assess their effectiveness and efficiency.” 5 U.S.C. 311. Credible program evaluation activities are implemented with relevance and utility, rigor, independence and objectivity, transparency, and ethics (OMB Circular A-11, Part 6 Section 290).

For grant recipients receiving an award, evaluation costs are allowable costs (either as direct or indirect), unless prohibited by statute or regulation, and such costs may include

the personnel and equipment needed for data infrastructure and expertise in data analysis, performance, and evaluation. (2 CFR part 200).

### *3. Reporting*

#### *a. Progress Reporting on Grant Activity*

Each applicant selected for a grant will be required to comply with all standard FRA reporting requirements, including quarterly progress reports, quarterly Federal financial reports, and interim and final performance reports, as well as all applicable auditing, monitoring and close out requirements. Reports may be submitted electronically. Pursuant to 2 CFR 170.210, non-Federal entities applying under this NOFO must have the necessary processes and systems in place to comply with the reporting requirements should they receive Federal funding.

#### *b. Additional Reporting*

Applicants selected for funding are required to comply with all reporting requirements in the standard terms and conditions for FRA grant awards including 2 CFR 180.335 and 2 CFR 180.350.

If the Federal share of any Federal award under this NOFO may include more than \$500,000 over the period of performance, applicants are informed of the post award reporting requirements reflected in —Award Term and Condition for Recipient Integrity and Performance Matters.

#### *c. Performance Reporting*

Each applicant selected for funding must collect information and report on the project's performance using measures mutually agreed upon by FRA and the grantee to assess progress in achieving strategic goals and objectives.

### **H. Federal Awarding Agency Contacts**

For further information related to this notice, please contact Douglas Gascon, Office of Policy and Planning, Federal Railroad Administration, 1200 New Jersey



Avenue SE, Room W38-212, Washington, DC 20590; douglas.gascon@dot.gov; 202-493-0239.

## **I. Other Information**

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission “Contains Confidential Business Information (CBI)”; (2) mark each affected page “CBI”; and (3) highlight or otherwise denote the CBI portions.

The DOT regulations implementing the Freedom of Information Act (FOIA) are found at 49 CFR Part 7 Subpart C – Availability of Reasonably Described Records under the Freedom of Information Act and sets forth rules for FRA to make requested materials, information and records publicly available under FOIA. Unless prohibited by law and to the extent permitted under the FOIA, contents of application and proposals submitted by successful applicants may be released in response to FOIA requests.

In addition, following the completion of the selection process and announcement of awards consistent with 49 U.S.C 22909(i), FRA will post online a list of all eligible applicants submitting an application, a list of all proposed projects and applicants that FRA determines are ineligible, and a list of the grant recipients that were selected to receive grant funding under the RCE Program on an annual basis. Except for information withheld under the previous paragraph, FRA may also make application narratives publicly available or share application information within DOT or with other Federal agencies if FRA determines that sharing is relevant to the respective program’s objectives.

Issued in Washington, D.C.

**Amitabha Bose,**

*Administrator.*

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